

COMMERCIAL EVICTION URGENCY ORDINANCE

Marc L. Zafferano, City Attorney

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AGENDA

- **Background**
- **Policy Rationales**
- **Legal Basis**
- **Ordinance Provisions for Discussion and Direction**
- **Next steps**

BACKGROUND

- **March 16, 2020**
 - **Shelter-in-Place Order and Emergency Proclamation (County, San Bruno)**
 - **State Order authorizing local jurisdictions to adopt residential and commercial moratoria on evictions**
- **March 23, 2020**
 - **County adopts moratorium on residential evictions covering entire County**
- **April 7, 2020**
 - **County adopts moratorium on commercial evictions covering only unincorporated areas**

POLICY RATIONALES

- Severe and unprecedented economic and societal dislocation
- Public interest in small businesses remaining open
 - Provide essential services during pandemic; supports public health, safety and welfare
- Public interest in other small businesses reopening when allowed
 - Essential to future health, safety and welfare of community

POLICY RATIONALES (CONT.)

- **Other considerations**
 - **More equal bargaining positions between commercial landlords/tenants than residential**
 - **Some landlords may qualify as “small businesses”**
 - **Courts not hearing any eviction cases until 90 days after shelter-in-place order lifted by Gov.**

LEGAL BASIS FOR ORDINANCE

- **Government Code section 36937: urgency ordinance to protect public peace, health, safety and welfare**
- **Requires factual findings**
 - **Courts will generally defer to City Council's findings**
- **Requires 4/5 vote of City Council**

ORDINANCE PROVISIONS FOR DISCUSSION AND DIRECTION

- Prohibits steps toward commercial evictions directly based on COVID-19 conditions and inability to pay
 - Requires landlord notice of ordinance
 - Requires tenant documentation of loss in income
 - Rent remains due after ordinance expires (all on May 31)

ORDINANCE PROVISIONS FOR DISCUSSION AND DIRECTION (CONT.)

- Applies to “small businesses” with gross receipts of less than:
 - County, Menlo Park, Pacifica: \$2.5M
 - Millbrae: \$5M
 - San Mateo, SSF: \$25M
- San Bruno: 2,933 total businesses
 - 4.4% (128): Gross receipts more than \$5M
 - 7.1% (209): Gross receipts between \$2.5-5M
 - 16% (468): Gross receipts between \$1-2.5M

ORDINANCE PROVISIONS FOR DISCUSSION AND DIRECTION (CONT.)

- **Effective: Date of adoption**
 - **Could be retroactive to date of non-expired notices of eviction**

ORDINANCE PROVISIONS FOR DISCUSSION AND DIRECTION (CONT.)

- Time to pay after expiration of ordinance
 - **Pacifica: 90 days**
 - **All others: Total of 180 days, some with earlier dates plus possible extensions**

ORDINANCE PROVISIONS FOR DISCUSSION AND DIRECTION (CONT.)

- **Hardship waiver for landlord?**
 - **County/SSF: No**
 - **Others: Yes**

ORDINANCE PROVISIONS FOR DISCUSSION AND DIRECTION (CONT.)

- **Option of city enforcement**
 - **Pacifica: No**
 - **Others: Yes**

SUMMARY OF DIRECTION REQUESTED

- Expiration date: May 31?
- Definition of small business
 - \$2.5M - \$25M?
- Effective date
 - Adoption or retroactive?
- Time to pay
 - Up to 180 days, in increments?
- Landlord hardship waiver?
- Option of City enforcement?

NEXT STEPS

- Provide direction regarding ordinance provisions
- Ordinance could be adopted at next regular meeting